

133816-1

REMARKSClaim Rejection Under 35 U.S.C. § 103(a)

Claims 1-8, 10, 11, 13-26, and 29-32 stand rejected under 35 U.S.C. 103(a) as obvious over U.S. Patent Application Publication No. 2002/0169256 of Merfeld et al. ("Merfeld"). 6/23/05 Office Action, page 2, fourth paragraph. Applicants respectfully traverse this rejection.

Merfeld is not available prior art for a rejection under 35 U.S.C. § 103(a). Merfeld was published on November 14, 2002. The present application was filed on October 3, 2003. Merfeld thus was not "patented . . . in this or a foreign country . . . more than one year prior to the date of application for patent," and Merfeld is accordingly not available as prior art under 35 U.S.C. § 102(b). Merfeld is also not available as prior art under 35 U.S.C. § 102(a) or (e). As stated unequivocally in the accompanying declaration under 37 C.F.R. §1.132, the portions of Merfeld relied on by the examiner were conceived by one of the present inventors, Gary W. Yeager. The relevant portions of Merfeld were therefore not "described in a printed publication in this . . . country, before the invention thereof by the applicant for patent" for the purposes of § 102(a), nor were they "described in – (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent" for the purposes of § 102(e). Note that the declaration of Yeager is sufficient to remove Merfeld as a reference, and disclaimer by Yeager's co-inventors on the Merfeld reference (Merfeld, Colborn, and Duffey) is not required. *See* MPEP 716.10.

In short, Applicants have demonstrated that Merfeld is not available as prior art for the purpose of the present obviousness rejection. By removing the sole reference relied on, Applicants have fully responded to the rejection, and their choice not to respond to the particular allegations made by the Examiner in explaining the rejections shall not be construed as a concession to those allegations.

133816-1

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance is requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 50-1131 maintained by Assignee.

Respectfully submitted,

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